IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 395 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.S.R.T. CORPORATION

Versus

NATHABHAI B. MAKWANA

Appearance:

1. Special Civil Application No. 395 of 1993

Ms. Krina Thakkar for MR YOGESH S LAKHANI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/10/2002

ORAL JUDGEMENT

Heard learned advocate Ms. Krina Thakkar for Mr.

Lakhani for the petitioner. Notice of admission has been served upon the respondent but the respondent has not remained present either in person or through any advocate and, therefore, the matter has been taken up for final hearing in absence of the respondent.

2. By way of this petition under Article 226/227 of the Constitution of India, the petitioner corporation has challenged the judgment and award made by the Industrial Tribunal concerned in Reference (IT) No. 459 of 1990 dated 3rd August, 1992 wherein the tribunal has set aside the order passed in Default Case No.29 of 1979 wherein the concerned workman was held responsible and consequently the order of punishment passed against the workman concerned has also been set aside and the petitioner corporation has been directed to make good the economic loss suffered by the respondent workman as a consequence thereof.

At the time of issuing rule, this court has not stayed the reinstatement but has stayed the award qua back wages alone with a rider that if the petitioner fails in the petition, the petitioner will pay the back wages as awarded by the tribunal with 12 per cent interest thereon to the respondent workman by order dated 25.1.1993.

Learned advocate Ms. Thakkar appearing for Mr. Lakhani for the petitioner has submitted that on 10th March, 1979, the respondent was on route from Bholaj to Bavla as adriver; while his bus was passing through Gangad Cross Roads,at that time, his bus dashed with the truck bearing No. 6490 wherein the truck and the bus were damage and some passengers travelling in the bus had received bodily injuries. She has submitted that in connection with the said accident, default case no. 29 of 1979 was registered against the respondent and departmental inquiry was initiated and by order dated 11.6.1981, the respondent was dismissed from service against which the respondent filed the first appeal which was dismissed on 7.10.1981. Thereafter, against the order passed in the first appeal, the respondent filed the second appeal which was allowed on 22.9.1982 wherein the respondent was ordered to be reinstated in service and it was directed that the intervening period be treated as leave without pay and he was ordered to be placed in the minimum time scale of the driver cadre and since the workman was aggrieved even by that order also, the workman raised the dispute through his union. She has also submitted that the said order of punishment passed by the second appellate authority was challenged

by the respondent after the period of about eight years before the tribunal under the provisions of the Industrial Disputes Act, 1947. Thereafter, the tribunal examined the said reference and set aside the order of punishment imposed against the respondent workman. She has further submitted that the contention of delay of about eight years raised by the petitioner before the tribunal has not been examined and considered by the tribunal while making the impugned award and, therefore, the award made by the industrial tribunal is required to be quashed and set aside. She has also submitted that though there is no limitation prescribed under the Industrial Disputes Act,1947 for raising of an industrial dispute within some prescribed period, it is necessary for the workman to raise such dispute within reasonable period and it is also necessary for the workman to explain such delay. She has submitted that the reference ought to have been rejected by the tribunal only on the ground of delay and laches on the part of the workman in raising the dispute. She has further submitted without prejudice to the aforesaid contention that the delay is having some impact and this aspect ought to have been considered by the tribunal while granting relief in favour of the respondent workman. She has submitted that this aspect has been totally ignored by the tribunal while setting aside the order of punishment. She has submitted that in view of eight years' delay in raising the dispute, the tribunal was not justified in granting entire difference and arrears of salary and such relief is creating unnecessary burden on the petitioner corporation which is a public body.

I have considered the submissions made by Ms. Thakkar, learned advocate for the petitioner corporation. I have also perused the award made by the industrial tribunal. Looking to the record and the award made by the tribunal, it is clear that the tribunal has set aside the order of punishment only on the ground that during the course of departmental inquiry, the corporation has not led any oral evidence of an eye witness who can prove negligence and rashness on the part of the respondent workman. The tribunal has also considered that except the reporter,none else has been examined in the departmental inquiry and the reporter was admittedly not an eye witness. In view of this, the tribunal has come to the conclusion that there was no legal evidence available with the departmental authority to record the finding of guilt against the respondent workman for the accident in question. It also appears from the perusal of the award made by the tribunal that the truck had

dashed with the ST Bus from the rear side of the bus and, therefore, there was no negligence on the part of the respondent workman. The tribunal has also considered one more aspect that in criminal proceedings, the respondent was acquitted by the competent criminal court. After considering all these aspects, the tribunal has come to the conclusion that the charge of negligence and rashness must have to be proved by the corporation by way of definite evidence in the departmental proceedings. It is clear that the reporter was not the person who witnessed the incident and, therefore, reporter cannot be considered as an eye witness and, therefore, there was no legal evidence available with the competent authority to hold the charge proved against the respondent workman. Therefore, considering this reasoning given by the tribunal in light of the decision of this court in case of Rupsinh versus GSRTC reported in 1985 Lab IC 1085, this court is of the view that the reasoning given by the tribunal are correct and for that, the tribunal has not committed any error requiring interference of this court in this petition under Article 226/227 of the Constitution of India.

However, the contention raised by Ms. Thakkar as regards delay of eight years in raising of an industrial dispute and impact thereof on the relief would certainly require some consideration. The respondent was ordered to be reinstated in service by the order of the second appellate authority dated 22nd September, 1982 and the reference has been referred for adjudication on 6th November, 1990. Therefore, considering this delay in raising of an industrial dispute, according to my opinion, it would be just and proper if no benefit of arrears of difference of salary is given to the respondent workman for the period from 22.9.1982 till 6th November, 1990 and it would be just and proper to clarify that the workman will be entitled for all such benefits only from 6th November, 1990. One more aspect is required to be taken into consideration that in past, the workman concerned has committed about thirteen defaults and in one case, he met with an accident and in rest of the cases, minor misconducts were committed by the respondent and in view of this past record of the respondent workman, this court is of the view that some punishment is required tobe imposed upon the respondent workman. Therefore, there is some substance in the submissions made by Ms. Thakkar. Looking to the past record of the respondent workman, according to my opinion, it would be just and proper if two annual increments of the respondent workman are ordered to be withheld without cumulative effect.

Therefore, in the result, this petition is partly allowed. It is ordered that instead of punishment of putting him in the minimum time scale of driver category, now the respondent is required to undergo the punishment of stoppage of two annual increments without cumulative effect and it is also clarified that the respondent is entitled for the benefits as per the impugned award of the tribunal only with effect from 6th November, 1990 and for the period prior thereto, he is not entitled for any such benefits. Award made by the tribunal in Reference (IT) NO. 459 of 1990 dated 3rd August, 1992 is hereby modified accordingly. It is further clarified that this court has partly allowed this petition and has modified the award made by the tribunal in aforesaid terms and, therefore, the petitioner corporation is not required to make payment of the benefits as per the award as modified by this court with interest thereon at the rate of 12 per cent per annum as has been directed by this court by passing order on 25.1.1993. Rule is made absolute in aforesaid terms with no order as to costs.

This being an old matter, corporation is directed to pay the arrears of difference of salary etc. as per the award as modified by this court within three months from the date of receipt of copy of this order.

25.10.2002. (H.K. Rathod,J.)

Vyas